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FEES TRANSMITTAL

NOV 03 2004

Application Number 10/603,262

Filing Date June 25, 2003

Confirmation No. 2868

Inventor(s) Michael E. McCadden

Group Art Unit 1615

Examiner Name Alton Nathaniel Pryor

Attorney Docket Number MMCD 3080.2

IF \$

METHOD OF PAYMENT

1. The Commissioner is hereby authorized to charge the indicated fees to Deposit Account No. 19-1345.
- The Commissioner is hereby authorized to charge any additional fees required under 37 CFR 1.16 and 1.17 to Deposit Account No. 19-1345.
- Applicant claims small entity status.
2. Check Enclosed. The Commissioner is hereby authorized to charge any under payment or credit any over payment to Deposit Account No. 19-1345.

FEES CALCULATION

1. BASIC FILING FEE Subtotal (1) \$ _____
(Type: _____)

2. EXTRA CLAIM FEES Subtotal (2) \$ _____

Total Claims _____
Independent Claims _____
Multiple Dependent Claims _____

3. ADDITIONAL FEES Subtotal (3) \$215.00

- Surcharge - late filing fee or oath
- Surcharge - late provisional filing fee or cover sheet
- Extension for reply within 2nd month
- Notice of Appeal
- Filing a Brief in Support of an appeal
- Request for ex parte Reexamination
- Petitions to the Commissioner
- Submission of Information Disclosure Statement
- Recording each patent assignment per property
- Request for Continued Examination
- Other: _____

TOTAL AMOUNT OF PAYMENT \$215.00

Edward J. Hejlek, Reg. No. 31,525

Date

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MMCD 3080.2
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Michael E. McCadden

Art Unit 1615

Serial No. 10/603,262

Filed June 25, 2003

Confirmation No. 2868

For GEL COMPOSITION FOR THE TOPICAL TREATMENT OF
RASHES, DERMATOSES AND LESIONS

Examiner Alton Nathaniel Pryor

November 3, 2004

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VIRGINIA 22313-1450

SIR:

LETTER TO THE PATENT OFFICE

This letter is in response to the Office action dated June 3, 2004.

Reconsideration is requested of the rejection of claims 1-10 under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 4, 5, 8, 10, 11, and 16 of U.S. Patent No. 6,656,928.

As discussed in greater detail in the Manual of Patent Examining Procedure, "[i]n determining whether a statutory basis for double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? 35 U.S.C. 101 prevents two patents from issuing on the same invention. 'Same Invention' means *identical* subject matter." MPEP 804 (emphasis added).

In the present application, claims 1-10 require that the composition be in the form of a gel. In contrast, claims 1, 4, 5, 8, 10, 11, and 16 of the '928 patent are open to other forms of the composition, e.g., a lotion or a cream.

In the present application, claims 1-10 require that the composition contain calamine. In contrast, claims 1, 4, 5, 8, 10, 11, and 16 of the '928 patent are open to other drying agents.

In the present application, claims 1-10 require that the composition contain (1) a mid- or high-potency corticosteroid, and (2) an imidazole anti-fungal agent. In contrast, claims 4 and 5 of the '928 patent require that a mid-potency corticosteroid and claims 8 and 10 of the '928 patent require that the anti-fungal agent be an imidazole anti-fungal agent, but none of claims 1, 4, 5, 8, 10, 11, and 16 of the '928 patent require both.

In summary, claims 1-10 of the present application are not claiming **identical** subject matter. Thus, a statutory double patenting rejection is not proper.

CONCLUSION

Enclosed is a check for \$215.00 for a two month extension of time. The Commissioner is hereby authorized to charge any underpayment and credit any overpayment of government fees to Deposit Account No. 19-1345.

Respectfully submitted,



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